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**\*REPLY TO NJ OFFICE**

June 25, 2018

The Honorable Michael A. Hammer, U.S.M.J.  
U.S. District Court, District of New Jersey  
MLK Jr. Federal Building & Courthouse  
50 Walnut Street, Courtroom MLK 2C  
Newark, NJ 07101

**Re: Michael Cioffi v. Borough of Englewood Cliffs et al.**  
**Docket No.: 2:16-cv-04536-ES-MAH**

Dear Judge Hammer:

Pursuant to Your Honor's Text Orders of May 24, 2018 (ECF Nos. 80 and 81), please accept the following joint status letter updating the Court on the ongoing discovery disputes among the parties.

**Plaintiff's Production of Audio Recordings Designated Attorneys' Eyes Only**

On June 14, 2018, Plaintiff supplied Defendants with a chart in the format directed by Your Honor in the Court's first Text Order of May 24, 2018 (EFC No. 80). Defendants' responses thereto will be supplied, as directed, on or before June 28, 2018.

**Borough's Privilege Designations**

Counsel for Plaintiff and the Borough are continuing discussions with respect to these designations. An additional conference is scheduled for June 27, 2018. All parties request the opportunity to provide Your Honor with the final positions of the parties following same on or before July 2, 2018. Counsel for Carrol McMorro has advised that they will not challenge the Borough's privilege designations regarding the Borough's production at this time but reserves their right to do so in the future, including, but not limited

to, certain documents identified in Mr. Harrison's June 25, 2018 letter to counsel for the Borough. Counsel for Carrol McMorrow has challenged the privilege designation the Borough asserted as to four of the audio recordings produced by Plaintiff and has requested that Ms. McMorrow be permitted to review these audio recordings designated by the Borough as privileged in Mr. Harrison's June 25, 2018 letter to counsel for the Borough. The Borough will review and respond to Mr. Harrison's requests related to the audio recordings and attempt to resolve the issue by June 28, 2018 as defense counsel prepares the responding chart of audio files in accordance with the Court's first Text Order of May 24, 2018 (EFC No. 80).

#### **Borough's Confidentiality Designations**

Counsel for Carrol McMorrow has advised that they will not challenge the Borough's remaining confidentiality designations related to the Borough's production at this time but reserves their right to do so in the future, including but not limited to certain documents identified in Mr. Harrison's June 25, 2018 letter to counsel for the Borough.

#### **Plaintiff's Certification to Discovery Responses**

Plaintiff's Certification to the Answers to Interrogatories was provided on November 21, 2017. Plaintiff has not provided a certification to his document production, and counsel for Plaintiff has advised that it is his position that Plaintiff is under no obligation to provide a certification under *Fed. R. Civ. P. 34*. The Borough has provided a proposed form certification and requests that Plaintiff execute same.

#### **Carrol McMorrow's Request for Document Production from the Borough**

Counsel for Carrol McMorrow has requested the Borough produce certain documents. Some of the requested documents have been produced. The Borough is working towards producing the remaining documents.

#### **Plaintiff's Responses to the Defendants' Second Set of Interrogatories and Notice to Produce**

The Borough served a Second Set of Interrogatories to Plaintiff, Michael Cioffi and Second Notice

to Produce Documents to Plaintiff, Michael Cioffi, in accordance with the Court's Order of January 19, 2018 (ECF No. 44). Plaintiff was ordered to respond within thirty days, or by March 3, 2018 (See ECF No. 44). To date, Defendants have not received Plaintiff's answers to these discovery demands. Counsel for Plaintiff was not in a position to respond to this issue in a substantive manner inasmuch as a request to include it in this letter was not made until 5:07 PM today. Counsel for the Borough will address the issue with Counsel for Plaintiff regarding same during counsel's conference scheduled for June 27, 2018 but will seek permission from the Court to file a Motion to Compel if the parties are not able to resolve the issue.

**Appointment of a Special Discovery Master**

The Court's second Text Order of May 24, 2018 (ECF No. 81) included an indication the Court may appoint a Special Discovery Master to address unresolved discovery disputes. Plaintiff is amenable to such an appointment. The Borough objects to the appointment of a Special Discovery Master, or in being responsible for the fees for same should one be appointed, as Plaintiff has not acted in good faith in providing discovery, his assertion of objections and positions relating to same, and in resolving disputes. Defendant Kranjac and McMorroff object to the appointment of a Special Discovery Master.

Thank you for Your Honor's kind attention to these matters.

Respectfully submitted,

s/ Leonard E. Seaman  
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